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**In The
Supreme Court of the United States**

OCTOBER TERM, 1951

NO. 94

**AGAPITA GALLEGOS, PETITIONER,
V.
STATE OF NEBRASKA, RESPONDENT.**

BRIEF FOR THE PETITIONER.

**JAMES G. MOTHERSEAD,
FLOYD E. WRIGHT,
ROBERT G. SIMMONS, JR.,
Counsel for Petitioner.**

INDEX

Subject Index

Page

Opinion below	1
Jurisdiction	1
Question presented	2
Specification of errors	2
Statement	3
Summary of argument	8
Argument	10
Admission of confession obtained during twenty-five days of unlawful detention is not due process of law	10
Twenty-five days of detention before arraignment is unlawful	11
Effect of unlawful detention	13
Unlawful detention as duress an unlawful act is not due process of law	13
An unlawful act is not due process of law	16
Confessions prior to seasonable arraignment are admissible	18
Record shows no verification of confessions	18
Illegal detention after first confession is material to admission of first confession	19
Right to counsel is violated by unlawful detention	20
Confessions obtained during unlawful detention by federal officers are inadmissible in state courts	22
The legal denial of the natural rights of a single individual jeopardizes the rights of all	22
Conclusion	24
Appendix	25

INDEX (Continued)

Cases Cited

Page

Gallegos v. State, 152 Neb. 831, 43 N. W. (2d) 1	1
Haley v. Ohio, 332 U. S. 596, 92 L. Ed. 226	9, 17, 20
Harris v. South Carolina, 338 U. S. 68	14, 17
Lustig v. United States, 338 U. S. 74	10, 22
Maher v. State, 144 Neb. 463, 13 N. W. (2d) 63	11
Quicksall v. Michigan, 339 U. S. 660, 94 L. Ed. 1188	21
Turner v. Pennsylvania, 338 U. S. 62, 93 L. Ed. 1810	17
Watts v. Indiana, 338 U. S. 49, 93 L. Ed. 1801	9, 17, 18
Ward v. Texas, 316 U. S. 547, 86 L. Ed. 1663	11
Wiley, In re Estate of, 150 Neb. 898, 36 N. W. (2d) 483	12

Nebraska Statutes

Sec. 29-406, R. S. 1943	11, 25
Sec. 29-410, R. S. 1943	11, 25
Sec. 29-412, R. S. 1943	11, 25
Sec. 25-12,104, R. S. 1943	12

Constitution Cited

Fifth Amendment to U. S. Constitution	2, 7
Fourteenth Amendment to U. S. Constitution	2, 7

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OPINION BELOW.

The opinion of the Supreme Court of Nebraska being reviewed appears in the case of *Gallegos v. State*, 152 Neb. 831, 43 N. W. (2d) 1.

JURISDICTION.

This case involves the federal constitutional question of the admissibility of confessions and plea of petitioner obtained from him during a period of 25

days unlawful detention before he was brought before a magistrate and before counsel was appointed to defend him. The federal question was first raised at the trial of petitioner in the District Court of Scotts Bluff County, Nebraska, when the prosecuting attorney offered said confessions (R.101; R.116) and plea (R.53, 55) in evidence; the objection being that the record showed that the petitioner had been held unlawfully without being brought before a magistrate for a period of 25 days and that said confessions and plea were not voluntary and their admission would be a violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States and a violation of provisions against self-incrimination contained in the Fifth Amendment to the Constitution of the United States (R.101,116,53,55). The trial court overruled the objections and admitted said confessions and plea in evidence. The same constitutional question involved herein was raised before the Supreme Court of the State of Nebraska (R.1). The opinion of the court did not refer to any federal question.

QUESTION PRESENTED.

Are confessions and a plea obtained from a prisoner during a period of twenty-five days illegal detention by federal and state officers before being brought before a magistrate and before counsel is appointed to assist the prisoner admissible in evidence?

SPECIFICATION OF ERRORS.

The Supreme Court of Nebraska erred:

1. In holding that the Exhibit 10 (R.103) is admissible in evidence, when obtained during a period of twenty-five days unlawful detention.

2. In holding that Exhibit 12 (R.117) is admissible in evidence when obtained during a period of twenty-five days of unlawful detention.

3. In holding that the plea on arraignment (R.55) is admissible in evidence when obtained at the termination of twenty-five days of unlawful detention prior to appointment of counsel to assist prisoner.

STATEMENT.

The petitioner, a 38 year old illiterate Mexican peon, who could understand no English (R.13), and his brother (R.59), were arrested at the request of the U. S. Immigration and Naturalization Service (R.60, 68,69) in El Paso County, Texas, September 19, 1949 (R.60). They were taken from the place of arrest by the Chief Deputy Sheriff of El Paso County to the jail located in the El Paso County Courthouse in El Paso, Texas (R.61,65). Petitioner was interrogated by several experienced law officers. Upon denying his identity he was immediately confined (R.65). The confinement was in a room, approximately 8 feet square which had no windows (R.80,100) and no furniture. He was so confined for approximately 21 hours (R.65). He was then again interrogated by an experienced law enforcement officer (R.66). Upon petitioner's refusal to make an incriminating statement, he was again confined (R.66). This confinement was in a different cell, in a solitary cell which was dark. It did have ventilation. It did have an iron bed, but without a mattress (R.88,95). This confinement lasted

for approximately 48 hours (R.67). Petitioner was again removed and interrogated by an experienced law enforcement officer (R.67). He was reconfined for a period of 24 hours and again interviewed by an experienced law enforcement officer (R.70).

During these interrogations, petitioner was told that they would keep him locked up until he told the truth (R.78); that he would be placed in more severe rooms if he did not tell the truth (R.80); that he would be turned over to the Mexican authorities who would beat him if he did not tell the truth (R.79); that they would put a machine on him that would force him to tell the truth (R.80); and that his brother would be turned loose if he told the truth (R.81). At this time he told his inquisitors that he would tell them what they wanted to know if his brother was released (R.81). (The only matters in this statement denied by the Texas officers and not found in the opinion of the Nebraska Supreme Court are those contained in this paragraph. On all other matters there is no factual dispute.)

On September 23, 1949, a written statement (Exhibit 10; R.108) was prepared in English which was translated and read to petitioner in Mexican and to which the petitioner attached his signature.

Thereafter, on the 27th day of September, 1949, the petitioner was removed from El Paso County to Scotts Bluff County, Nebraska, by the sheriff of Scotts Bluff County, Nebraska (R.132).

During this period of time no charge of any kind was ever brought against petitioner in any court in

El Paso County (R.14,68). He was never brought before a magistrate (R.132).

The petitioner arrived in Scotts Bluff County, Nebraska, on September 28, 1949, and was immediately incarcerated in Scotts Bluff County jail (R.106), which is located in the courthouse (R.109). He was not interviewed by anyone until October 1, 1949 (R.108). At that time, he was removed from the jail, interviewed by the sheriff, deputy sheriff and deputy county attorney through an interpreter (R.106) employed by the sheriff (R.106,44) named Lopez. The remarks made by Lopez in English purporting to be a translation of petitioner's statements were stenographically reported (R.114). The stenographic report (Exhibit 12, R.117) of the statements of Lopez was prepared in English and was translated by Lopez to petitioner (R.113).

The petitioner was first brought before a magistrate on October 13, 1949 (R.109,132).

After 25 days of confinement without being brought before a magistrate, contrary to laws of both Texas and Nebraska, petitioner was brought before the county judge of Scotts Bluff County, Nebraska, for arraignment. He was taken to the courtroom by the sheriff's officers. The sheriff who had brought him from El Paso, Texas, was present (R.30,9). Likewise, the deputy county attorney, who was present at the interrogation on October 1st, appeared to read the complaint (R.9). The complaint was interpreted by the same interpreter employed by the sheriff, Lopez (R.9).

The record is clear that in response to the purported translation of the complaint into Spanish, petitioner replied that he did not understand (R.9,57).

The county judge then requested the interpreter to explain the complaint (R.10). The record is clear that conversation occurred between petitioner and Lopez at that time (R.57), after which Lopez announced to the court that petitioner understood and plead guilty (R.9,58).

Thereafter, on October 15, 1949, the District Court of Scotts Bluff County appointed an attorney to represent defendant (R.11).

The purported statement (Exhibit 10, R.103) taken in El Paso, Texas, September 23, 1949, in substance stated that the petitioner resided on a farm near Minatare, Nebraska, with Genovesa Carrillo; that while residing there, they quarreled and on one evening "got into a fight and during this fight I picked up a piece of stove wood, as we used a stove, and I hit Genovesa three times in the head"; that thereafter he discovered that she was dead; that he dug a grave near the door of the house and buried her.

The purported statement (Exhibit 12, R.117), taken in Scotts Bluff County, Nebraska, on October 1, 1949, states that during a quarrel "I picked up a piece of stove wood, not to kill her but to frighten her and she fought back at me after I hit her she fell down. She was laying on the floor telling me many things. I hit her again two times after she had fallen down"; that he then stood over her body waiting for her to awaken, until daybreak, covered her with a blanket and on the

next evening just as it was getting dark, dug a grave and buried her.

At the trial of said cause (second degree murder), each of the alleged confessions and statements of the defendant were offered and received in evidence over the objection of the defendant that the same were not voluntary statements and their admission was in violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States and the violation of provisions against self-incrimination of the Fifth Amendment of the Constitution of the United States (R.101,116). Likewise, the purported plea of guilty of the defendant in the county court upon arraignment was likewise admitted in evidence to the jury over the same objection (R.53,55). Upon submission the jury found the defendant guilty of manslaughter (R.16). He was sentenced to ten years (the maximum) in the Nebraska State Penitentiary (R.19) where he is now incarcerated.

The petitioner appealed to the Supreme Court of the State of Nebraska raising the admissibility of the above statements and plea along with other matters of local law (R.1). The Supreme Court of Nebraska overruled all contentions of the petitioner and affirmed the conviction, without discussing any federal or constitutional question or the matter of illegal detention, except to say (R.28):

"The question as to the time in which the defendant should be given a preliminary hearing is a question for the court. There can be no precise length of time, after the arrest of the person, in which he must be given a hearing. The theory of the law is that he must be given a hearing as

soon as possible. The person charged should be given a preliminary hearing just as soon as the nature and circumstances of the case will permit."

SUMMARY OF ARGUMENT.

1. Twenty-five days of detention before arraignment is unlawful. Petitioner was arrested on September 19, 1949, in El Paso County, Texas. The first arraignment was on October 13, 1949, in Scotts Bluff County, Nebraska. The law of Texas and Nebraska requires arraignment before a magistrate as soon as possible after arrest. Confessions were obtained from petitioner on the fifth (in Texas) and the thirteenth (in Nebraska) day after arrest. Plea was obtained on the twenty-fifth day of unlawful detention. Detention of a prisoner after a reasonable time to take him before a magistrate is unlawful. Since the prisoner is under the control of the officers, the burden should be upon the officers to prove the reasonableness of the time in taking the prisoner before the magistrate when this matter is questioned. There is no record here justifying the necessity of the delay in arraignment. Therefore the detention was unlawful and the conduct of the investigation officer at the time that the confession was taken was unlawful.

2. Unlawful detention amounted to duress under the circumstances of this case. The petitioner was illiterate and uneducated. He was a citizen of Mexico and unfamiliar with judicial processes. He was questioned. Upon giving unsatisfactory answers he was placed in solitary confinement. After 5 days of questioning and solitary confinement, the first confession was obtained.

3. The constitutional inquiry into admissibility and confessions does not go to truth or falsity of statements, or to fact of whether or not such statements were in fact voluntary but goes to the surrounding circumstances and conduct of officers at the time confessions were obtained. (*Watts v. Indiana*, 338 U. S. 49, 54). Since the conduct of officers was unlawful in not taking the prisoner before a magistrate, the confessions so taken were not within due process. The due process clause does not embrace an unlawful act.

4. Petitioner does not contend that all interrogation between arrest and arraignment violates due process of law. Only these confessions obtained after a reasonable time for arraignment has elapsed are inadmissible as violation of due process clause.

5. The confessions involved are not verified.

6. The illegal detention which accrued after the confessions is instructive of the attitude and conduct of the officers at the time of taking the confessions. It is therefore germane to the admissibility of each confession (*Haley v. Ohio*, 332 U. S. 596, 600).

7. Failure of the State to furnish counsel to prisoner, as a constitutional question, is only one aspect of due process of law. Failure to take a prisoner before magistrate prevents a prisoner from the enjoyment of the right of counsel and is therefore further indication that unlawful detention is a violation of due process of law.

8. The unlawful detention from September 19, 1949, to September 27, 1949, in El Paso County, Texas, was

by the U. S. Immigration and Naturalization Service. The first confession was obtained during this period. This court has held in *Lustig v. United States*, 338 U. S. 74, that illegal conduct of federal officers will not be tolerated.

9. Affirmance of the Supreme Court of Nebraska will create a precedent which will be construed as authority to use detention as a device for obtaining confessions and satisfactory pleas. Constitutional rights will be endangered. Officials, whose standard is "What can I get away with?" rather than "What is right?", will be encouraged. This court should rededicate these basic principles of unalienable rights as a guide to all official and private conduct.

ARGUMENT.

Admission of Confession Obtained During Period of Twenty-Five Days of Unlawful Detention is Not Due Process of Law.

As stated in the petition for certiorari, this case presents for the first time, so far as the writer knows, the clear cut issue of the effect of unlawful detention as a violation of due process isolated from other forms of duress. Although the petitioner alleged other forms of duress in addition, these were denied by the officers. The Supreme Court of Nebraska determined that this was a fact question. This fact question is not for presentation to this court.

Twenty-five Days Detention Before Arraignment is Unlawful.

The period of detention before arraignment is clearly shown by stipulation entered into between the State of Nebraska and the petitioner at the original trial (R. 132):

"It is stipulated and agreed by and between the plaintiff, State of Nebraska and the defendant, Agapita Gallegos, that at all times from and on or about Monday the 19th day of September, 1949 until this date the defendant, Agapita Galloges has been in the custody either of the authorities of El Paso County, Texas or of the authorities of Scotts Bluff County, Nebraska and that from on or about the 19th day of September, 1949 until on or about the 27th day of September, 1949, he was incarcerated in Scotts Bluff County, Nebraska and in-ated in Scotts Bluff County, Nebraska on or about Wednesday the 28th day of September, 1949, until this date, has been in the custody of the sherriff of Scotts Bluff County, Nebraska, and incarcerated in the County jail of Scotts Bluff County, Nebraska,

"It is stipulated further that during the entire period referred to in the above stipulation until October 13th, 1949, the defendant was never brought before any magistrate in the state of Texas or the State of Nebraska."

That the detention during this time is unlawful is shown by the Nebraska statutes, R. S. 1943, Sections 29-406, 29-410, and Section 29-412 (see Appendix). These have been interpreted by the Nebraska Supreme Court in the case of *Maier v. State*, 144 Neb. 463, 13 N. W. (2d) 631, to require a person be brought before a magistrate as soon as possible. The same rule appears to be the law in the State of Texas. *Ward v. Texas*, 316

U. S. 547, 86 L. Ed. 1663. In any event, in Nebraska, the law of Texas is presumed to be the same as the law of Nebraska unless proof is made to the contrary. R. S. 1940, Sec. 25-12,104; *In re Estate of Wiley*, 150 Neb. 898, 36 N. W. (2d) 483.

Arraignment cannot and need not be instantaneous with arrest. The time "as soon as possible" after arrest when a prisoner must be brought before a magistrate would necessarily vary with each individual arrest. Such factors as time and place of arrest, the conditions of travel from the point of arrest to the location of the magistrate and the convenience of the court, etc., must all be taken into consideration. It is lawful for an officer to hold a prisoner a reasonable time, considering these matters, before taking the prisoner before a magistrate.

Since the prisoner, during this period, is completely under the control of the officer, the officer is the one who must act in a reasonable time. When the reasonableness of the time is questioned, the officer should have the burden of proving that the time is reasonable.

Here, where the record demonstrates that the petitioner was a prisoner in courthouses, where presumably courts were in session and a magistrate available, twenty-five days before arraignment, the presumption should be that the arraignment could have been almost immediate.

Nothing in the record shows the necessity of any delay. In the absence of any evidence demonstrating the necessity of the delay, the court should find, as a matter of constitutional law, that the time before arraignment herein was unreasonable. (The Supreme Court of Ne-

braska did not pass on this question.) The detention was illegal. In not taking the prisoner before a magistrate in a reasonable time, the officers who had custody and took the statement (Exhibit 10, R.103 and Exhibit 12, R.117) were guilty of unlawful conduct.

Effect of Unlawful Detention.

The three items of evidence presented to the jury questioned here are the statement (Exhibit 10, R.103) taken September 23, 1949, the statement (Exhibit 12, R.117) taken October 1, 1949, and the plea on arraignment before the county judge, October 13, 1949 (R.55). The first statement (Exhibit 10, R.103) was obtained on the fifth, the second (Exhibit 12, R.117), on the thirteenth, and the plea on the 25th day of detention.

What then is the effect of the unlawful detention upon the admissibility of the confessions obtained during that period and the plea of guilty at the end of that period without the benefit of counsel?

Unlawful Detention as Duress.

Duress can be both physical and mental. Detention, alone without other factors, can be mental duress. This may be especially so here where petitioner is a citizen of Mexico, uneducated, unable to read or write.

Petitioner was arrested and questioned. He denied his identity. After further questioning he was placed in solitary confinement for twenty-four hours. He was then again questioned. He again denied his identity. After further questioning he was again returned to solitary confinement. After further solitary confinement for two days and two nights he was again taken before

experienced law enforcement officers and again questioned. On the fifth day after further solitary confinement for twenty-four hours he was again questioned. After five days of this treatment petitioner realized in his own illiterate and uneducated way that these experienced law enforcement officers who had custody of his person and his future desired that he tell them that he had killed Genovesa Carrillo. Petitioner undoubtedly realized that he would either do what these experienced law enforcement officers desired of him or they would continue to keep him in solitary confinement until he did. He yielded and made the statement (Exhibit 10, R.103).

Perhaps five days of such treatment would be inadequate to obtain an untrue statement from an educated American citizen who knew something of the constitutional guarantees, the rights of man and the tradition of fair play in American courts. Certainly it cannot be said that this treatment did not result in a statement from this petitioner which was not voluntary. That the petitioner was an illiterate; that the prisoner was not informed of his rights under local law such as the right to secure a lawyer and "the right to remain silent" "is relevant" to this inquiry.

Harris v. South Carolina, 338 U. S. 68, 70.

Later when he was taken to Scotts Bluff County, Nebraska, he undoubtedly remembered his lesson. After twelve days more in confinement before being brought before the magistrate and in the presence of the same officer who brought him from Texas and who had questioned him, and with the same interpreter he undoubtedly again remembered his lesson. He made the state-

ment which was translated by the sheriff's interpreter as a plea of guilty.

It is significant to note that immediately upon the petitioner being arraigned before the district judge of Scotts Bluff County, Nebraska, and being informed by the court of the seriousness of the charge against him, petitioner immediately desired to have the assistance of counsel and plead not guilty to the charge on file against him.

The basic element of due process of law in a criminal prosecution is that a person is presumed innocent until proven guilty. When the evidence to be used against the defendant is a statement of the defendant himself, due process of law requires the State to prove that the statement was made under such circumstances as complied with the technical requirements of due process of law and under such circumstances as a guarantee that the statement was free and voluntary and could not be the result of duress. The illegal detention had some influence upon the making of each of the statements and the plea. The fact that the matters were denied for five days indicates that something occurred during the five days which influenced petitioner. If he had been brought before a magistrate as the law required as soon as possible he would have been brought before a magistrate on the day of his arrest. (He was incarcerated in a jail in the courthouse where courts were presumably in session.) There he would be informed that he was being held on some specific charge (here probably violation of the United States Immigration and Naturalization laws). Here he would learn something of the judicial processes and of his obliga-

tions and rights. Failure to bring this petitioner before a magistrate within a reasonable time does have a causal connection with the change from denial to confession. The burden is upon the State to show the voluntary character of the statements. The record is devoid of any evidence which indicates that the illegal detention did not affect the giving of the statements and the plea.

The requirement that a prisoner must be taken before a magistrate as soon as possible should have more than theoretical significance. A prisoner has some civil remedies which are non-existent in fact where the prisoner is uneducated and in a foreign land, away from friends and not cognizant of his legal rights. He still has a theoretical remedy in suit for damages. Possibility of such suit had no effect on the officers in charge of petitioner.

If there is no compulsion on law enforcement officers to take a prisoner before a magistrate for fear of civil liability, then if this requirement is to have any significance there must be something making it to the advantage of the officers to take the prisoner before a magistrate as soon as possible. A rule of law that confessions obtained during *illegal* detention cannot be used in court will furnish the incentive to the officer. Without such a rule there would be no practical restriction upon an officer holding anyone indefinitely, in excess of twenty-five days, until the desired information was obtained.

An Unlawful Act is Not Due Process of Law.

As a legal proposition this court, so far as the writer knows, has never been presented with a situation where

unlawful detention was isolated from other forms of duress. The court has, however, on numerous occasions considered the facts of an unlawful detention in connection with other forms of duress in a state criminal prosecution where this court's review was limited to the constitutional question of due process of law, such as *Haley v. Ohio*, 332 U. S. 596, 92 L. Ed. 226; *Watts v. Indiana*, 338 U. S. 49, 93 L. Ed. 1801; *Turner v. Pennsylvania*, 338 U. S. 62, 93 L. Ed. 1810; *Harris v. South Carolina*, 338 U. S. 68, 93 L. Ed. 1815, and other cases. In reading the opinions of this court which involve state prosecutions and therefore a constitutional question only, the writer has failed to find any consideration given to the question as to whether or not the alleged confessions were, in fact, true or false. The court has not considered even the question of whether or not the confession was in fact voluntary. The court has considered only the circumstances surrounding the taking of the confessions to see whether or not the circumstances "offend the procedural standards of due process". This court has stated that when these circumstances imply "that it is better for the prisoner to answer than to persist in the refusal of disclosure which is his constitutional right", that the "abuse of the power of arrest" is "so grave" "as to offend the procedural standards of due process" (*Watts v. Indiana*, 338 U. S. 49, 54.

"The Fourteenth Admendment prohibits the police from using the private, secret custody of either man or child as a device for wringing confessions from them".

Haley v. Ohio, 332 U. S. 596, 601.

The constitutional inquiry, therefore, is not with the confession but with the conduct of the investigating

officers at the time of the confession. Their conduct must meet the "procedural standards of due process". Where their conduct is unlawful as here, they have not met that standard. Due process of law cannot embrace an unlawful act.

Confessions Prior to Seasonable Arraignment Are Admissible.

In making this argument counsel does not contend that this reasoning should be extended to holding that all confessions and statements made by a prisoner between his arrest and arraignment are inadmissible. Counsel does not argue that this court should establish a rule which means an absolute prohibition of interrogation while in custody before arraignment. Counsel does not believe that due process of law requires that investigating officers be so restricted. Counsel only submits that due process of law in this connection requires a compliance with law by bringing the prisoner before a magistrate as soon as possible. This gives the prisoner the benefit of the protection of a court. It prevents law enforcement officers from turning "the detention of an accused into a process of wrenching from him evidence which could not be extorted in open court" (*Watts v. Indiana*, 338 U. S. 49, 54), or using detention as an investigative aid.

Record Shows No Verification of Confessions.

The writer is cognizant that law enforcement officers rationalize the use of illegal conduct in investigating a criminal matter by the necessity of a solution to the crime and by the fact that illegally obtained evidence and confessions give leads which help the officer to

find admissible evidence. The writer is also cognizant that argument has been made to this court that illegally obtained confessions which are verified by admissible evidence should be admitted in order to properly enforce the criminal law. That sort of argument, if valid, would not be applicable to the present case. The first confession (Exhibit 10, R.103), taken September 23, 1949, by officers in Texas, is very poor in detail. There is nothing in it to lead to verification by extrinsic evidence. The confession of October 1, 1949 (Exhibit 12, R.117) is in sufficient detail to allow such verification. However, there is no significance in any apparent verification of it, because the statement was taken by officers who already knew the only verifiable matters (the body already having been removed and the only verifiable matters are those concerning the body). If this confession is tainted with unlawful conduct of the officers these verifiable matters may well be the result of suggestion on the part of the officers rather than information imparted by the prisoner. If the taint exists as to the confession it likewise exists as to the verifiable material in it under these circumstances. If the confession were free of any taint of unlawful conduct on the part of investigating officers, it would be admissible whether the matters contained therein were verifiable or not.

Illegal Detention After First Confession is Material To Admission of First Confession.

It may be argued that the fact that the petitioner here was held illegally for 25 days is not material to the admissibility of the statement (Exhibit 10, R.103) taken at the end of five days and that only five days' illegal detention should be considered. Argument might

be made concerning the second statement (Exhibit 12, R.117), that twelve days of illegal detention thereafter could not possibly have any influence on the giving of the statement. This court, however, has already considered this argument in a reasonably similar situation and has discarded it in *Haley v. Ohio*, 332 U. S. 596, 600, 92 L. Ed. 224. There this court said, referring to the fact that many items of duress involved there occurred after the confession:

"It is said that these events are not germane to the present problem because they happened after the confession was made. But they show such a callous attitude of the police toward the safeguards which respect for ordinary standards of human relationships compels that we take with a grain of salt their present apologia that the five hour grilling of this boy was conducted in a fair and dispassionate manner. When the police are so unmindful of these basic standards of conduct in their public dealings their secret treatment of a 15 year old boy behind closed doors in the dead of the night become darkly suspicious".

Therefore the illegal detention after obtaining the confessions indicates an attitude of indifference to the rights of this petitioner. This indifference is material to the allegations as to what happened during the five days of the illegal detention and solitary confinement before the first confession (Exhibit 10, R.103) and the illegal detention thirteen days before the second (Exhibit 12, R.117).

Right to Counsel Is Violated By Unlawful Detention.

It is presented herein that the confessions and plea involved herein are inadmissible inasmuch as they were

obtained during a period of 25 days' unlawful detention prior to appointment of counsel to represent the defendant or the petitioner.

The petitioner does not contend that the mere failure of the State of Nebraska to furnish him with counsel during any of this period of 25 days before his arraignment in the county court is a violation of due process of law. Petitioner agrees with the interpretation of this court in the case of *Quicksall v. Michigan*, 339 U. S. 660, 661, 94 L. Ed. 1188, 1190, that the

"State's duty to provide counsel, so far as the United States Constitution imposes it, is but one aspect of the comprehending guaranty of the Due Process Clause".

Petitioner contends that the fact that petitioner did not have counsel during this period of 25 days before his arraignment should be considered only in connection with all the circumstances involved. Petitioner is an illiterate foreigner. Such a person needs the counsel of an attorney earlier than other persons. Failure to bring him before a magistrate as required by law deprives him of the benefit of counsel for a longer time and unduly postpones the time when he receives the legal counsel to which he is entitled by law. Obviously, if he had the opportunity to have had counsel prior to the termination of the 25 days' unlawful detention, competent counsel would have prevented the continued unlawful detention. Failure to have counsel of itself is not argued to be violation of due process. The fact that unlawful detention postpones the enjoyment of the right to advice from counsel is only further indication that unlawful detention is a violation of the due process clause.

**Confessions Obtained During Unlawful Detention By
Federal Officers Are Inadmissible in State Courts.**

This portion of the argument is directed toward that portion of the record that shows that during all the time in which petitioner was in the El Paso County Court House, at El Paso, Texas, that he was held there at request of the United States Immigration and Naturalization Service. The unlawful detention was therefore by federal officers (R.60,68;69). The first statement (Exhibit 10, R.103) was obtained during that unlawful federal detention. Inasmuch as this court has held in *Lustig v. United States*, 338 U. S. 74, and other cases that it will not tolerate illegal conduct upon the part of the federal officers, this matter is being called to the court's attention.

**The Legal Denial of the Natural Rights of a Single
Individual Jeopardizes the Rights Of All.**

The affirmance of this case establishes a legal precedent which will be interpreted as justification for conduct as in this case. It will offer a legal excuse to deprive a prisoner of his constitutional "right to a prompt hearing before a magistrate" and "the right to the assistance of counsel", whenever it may suit the convenience of the officer or whenever he may desire to use detention and the implied threat of continued detention, as an aid in the procurement of confessions and satisfactory pleas on arraignment. The officer will be authorized to use this duress and will still be able to testify that no threats or promises were made. This would be a dangerous precedent. It is not only justifi-

cation for the use of detention as an investigative aid, but will be construed as authority by callous and indifferent law enforcement officers to further disregard the rights of man. It would give the opportunity to use detention as a device in enforcing indiscriminate regulations established, perhaps, without due process of law. It would offer a legal authority to the use of detention as a political weapon. Historically, those persons who have found that their own particular aims warranted the use of force and deprivation of human rights have found it expedient to have legal authority upon which to base their conduct. In times such as these we should be ever cautious to protect and support the constitutional rules laid down by our forefathers designed for protecting man from the persecution of his government. Public welfare, law and order and the peace and dignity of the United States are much better served by a lawful acquittal than by the loss of those rights for which many of our countrymen have fought and died.

Recently exposed examples of questioned conduct upon the part of some public officials have been designated as an illustration of a lowering standard of official morality. The standard of some officers, partly illustrated by this case, increasingly seems to be "what can I get away with?"—not "what is right?" We live in a moral universe. Our laws are founded upon those "unalienable" rights of man, which can have no other than a universal or divine source. Until this foundation of our law is re-established as a guide to all human behavior, confusion in our public and private conduct will continue. Now is the time to re-affirm those basic principles reflecting the universal law of nature. This

court is the appropriate forum. This case presents a vehicle for such rededication.

CONCLUSION.

For the foregoing reasons, we submit that the Supreme Court of Nebraska should be reversed.

AGAPITA GALLEGOS,
Petitioner,

By JAMES G. MOTHERSEAD,
FLOYD E. WRIGHT,
ROBERT G. SIMMONS, JR.,
His Attorneys.

APPENDIX.

Section 29-406, R. S. 1943, reads as follows:

"Warrant; to whom directed; Content. Warrants shall be directed to the sheriff or to any constable of the county, or if the same is issued by an officer of a municipal corporation authorized to issue such warrants, then to the marshall or other police officer of such corporation, and reciting the substance of the accusation, shall command the officer forthwith to take the accused and bring him before the magistrate or court issuing the warrant or some other magistrate having cognizance of the case, to be dealt with according to law, and no seal shall be necessary to the validity of the warrant."

Section 29-410, R. S. 1943, reads as follows:

"Prisoner; lawful arrest; detention. Any officer or other person having in lawful custody any person accused of an offense for the purpose of bringing him before the proper magistrate or court, may place and detain such prisoner in any county jail of this state for one night or longer, as the occasion may require, so as to answer the purpose of the arrest and custody."

Section 29-412, R. S. 1943, reads as follows:

"Warrant; arrest; prisoner to be taken before a magistrate return; endorsement and delivery. Whenever any person has been arrested under a warrant as provided in Sections 29-410 to 29-411, it shall be the duty of the officer making the arrest to take the person so arrested before the proper magistrate; and the warrant by virtue of which the arrest was made, with the proper return endorsement thereon and signed by the officer, shall be delivered to such magistrate."